REMARKS

The Office Action mailed November 28, 2007 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Claims 1-4, 9-24, 26, 30-32, 52, 63-85, and 87-91 are currently pending.

No claims stand allowed.

Claims 5-8, 25, 27-29, 33-51, and 53-62 were previously cancelled, without prejudice or disclaimer of the subject matter contained therein.

No "new matter" has been added by the Amendment.

The First 35 U.S.C. § 103 Rejection

Claims 1-4, 9-23, 26, 30-31, 52, 63-85 and 87-91 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dixon et al.[1] in view of Lamarque III et al.,[2] among which claims , 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, 76, 78, 81, and 83 are independent claims.[3] This rejection is respectfully traversed.

According to the Manual of Patent Examining Procedure (M.P.E.P.),

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.[4]

Claim 1

Claim 1 recites:

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[1] U.S. Patent No. 6,058,424 to Dixon et al.
[2] U.S. Patent No. 6,690,651 to Lamarque, III et al.
[3] Office Action mailed November 28, 2007, ¶ 3.
[4] M.P.E.P § 2143.

A backup server for enabling a data communications network to recover from a local server failure, the backup server comprising:

an information packet receiver responsive to the local server failure, the information packet receiver receiving from a memory associated with a network access server (NAS) an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information for maintaining connection of the ongoing call if the local server fails, the NAS capable of coupling a call placed from the call-in user to the data communications network and providing a network connection to the local server; and

a parser for reconstructing the call information from the information packet, such that the backup server maintains the ongoing call to the data communications network.

The Examiner states,

... Dixon discloses a backup server (new application server for taking over data as the original application server fails) for enabling a data communications network to recover from a failure of said local server (original application server), the data communications network including a local server and a network access server NAS (111 fig. 1), the NAS capable of coupling a request placed from a user (client 101 fig. 1) to the data communication network and providing a network connection to the local server, the NAS including a memory, said local server comprising:

an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet associated with a user request placed by the user via the NAS, wherein the information packet containing call information for maintaining connection of the ongoing call if the local server fails (taking over session as the original server fails, see abstract, figs. 1, 5, col.3 lines 11-44 and col.7 line 53 to col.8 line 51 and col.9 line 46 to col.10 line 17);

the NAS capable of coupling a call placed from the call-in user to the data communications network and providing a network connection the local server (the control server sends a callback to the original application server to indicate that the session takeover has started, see col. 10 lines 4-36);

a parser for reconstructing the call information data from said information data from the information data packet, whereby the server maintains the user request to the communications network (reconstructing information regarding all necessary session resources, see col. 10 lines 18-36).

Dixon does not specifically disclose that user placing a request by calling in. However, Lamarque discloses a user placing a request by calling in [using a user (122 fig. 1) to initiate a call at a terminal to communicate with the servers and networks, see fig. 1, col.3 line 22 to col.4 line 24]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize Lamarque's teachings into the computer system of Dixon to request data information through a network because it would have enabled user to bypass long

distance carriers and their permanent usage rates and to run voice traffic over the Internet (see Lamarque's col. 1 lines 24-67).[5]

The Applicants respectfully disagree for the reasons set forth below.

As an initial matter, the Applicant notes the Examiner's rejection of Claim 1 refers to words that were cancelled from the preamble of Claim 1 in the Response mailed September 6, 2007. The cancelled words are shown as underlined in the Examiner's rejection quoted above.

Turning to the substance of the rejection, each of independent Claims 1, 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, and 76 recites in part that the NAS is capable of coupling a call placed from the call-in user to the data communications network and providing a network connection to the local server. This is not disclosed by Dixon et al. in view of Lamarque III et al.

In the Office Action, the Examiner contends that the elements of the presently claimed invention are disclosed in Dixon et al. except that Dixon et al. does not teach "that user placing a request by calling in."[6] The Examiner further contends that Lamarque III et al. teaches "a user placing a request by calling in," and that it would be obvious to one having ordinary skill in the art at the time of the invention to incorporate Lamarque III et al.'s teachings into the computer system of Dixon et al. "to request data information through a network because it would have enabled user to bypass long distance carriers and their permanent usage rates and to run voice traffic over the Internet."[7] The Applicants respectfully disagree for the reasons set forth below.

[5] Office Action dated November 28, 2007, pp. 3-4. (emphasis added)
[6] Office Action dated June 6, 2007, pp. 3-4.
[7] Office Action dated June 6, 2007, pp. 3-4.

Claim 1 defines a backup server for enabling a data communications network to recover from a local server failure. The claimed backup server comprises (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from a memory associated with a network access server (NAS) an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information for maintaining connection of the ongoing call if the local server fails, the NAS capable of coupling a call placed from the call-in user to the data communications network and providing a network connection to the local server; and (b) a parser for reconstructing the call information from the information packet, such that the backup server maintains the ongoing call to the data communications network.

Regarding Dixon et al.:

In the Office Action, the Examiner specifically equates the control server (111 in FIG. 1 or 211 in FIG. 2 thereof) of Dixon et al. with the claimed network access server (NAS) of Claim 1, the original application server of Dixon et al. (208 in FIG. 2 thereof) with the local server of Claim 1, the new application server of Dixon et al. (209 or 210 in FIG. 2 thereof) with the backup server of Claim 1, and the client of Dixon et al. (101 in FIG. 1 or 201 in FIG. 2 thereof) with the user of Claim 1, citing the abstract, FIGS. 1 and 5, column 3, lines 11-44, column 7, line 53 to column 8, line 51, column 9, line 46 to column 10, line 17, and column 10, lines 18-36 of Dixon et al.[8]

However, in Dixon et al., it is the application server 208 that "handles communication with a client (the alleged user) requesting an asset" (column 4, lines 13-14 thereof), not the control server 211. Dixon et al.'s control server 211's functionality only includes "selection of

[8] Office Action dated June 6, 2007, pp. 3-4.

data pumps and command processing," controlling the number of multimedia or audio/video data streams, providing multimedia file data stream control functions such as "play", "stop", "pause", "rewind", and "forward", resource management such as admission control and lad balancing, and storing a catalog of multimedia assets (see column 3, line 66 through column 4, line 12 of Dixon et al.). That is, functions performed by Dixon et al.'s control server 211 are limited to control of multimedia data streams and management of the data. In addition, as shown in FIG. 2 thereof, the client system 201 directly communicates with the application server 208 (the alleged local server) in the multimedia server system 203 without intermediation by the control server 211.

Accordingly, Dixon et al.'s does not teach or suggest control server 211 coupling a user's request (or alleged call) to the network 105 or providing a network connection to the application server 208 (the alleged local server), as required by Claim 1.

Since Dixon et al. fails to teach or suggest the claimed NAS, Dixon et al. also fails to teach or suggest a memory associated with the NAS, from which an information packet containing call information for maintaining connection of an ongoing call if the local server fails is received, as required by Claim 1.

In response, the Examiner states:

> Dixon discloses the Applicant's claimed invention by showing a memory (allocating a memory space for the new application server) associated with a NAS capable of coupling a call placed from the call-in user to the data communications network and providing a network connection the local server (implementing the control server for sending a callback to the original application server to indicate that the session takeover has started, see col. 10 lines 4-36) as rejected above.[9]

The Applicant respectfully disagrees. Again, the functions performed by Dixon et al.'s control server 211 are limited to control of multimedia data streams and management of the data. In

[9] Office Action at ¶ 5.

addition, and the client system 201 of Dixon et al. directly communicates with the application server 208 (the alleged local server) in the multimedia server system 203 *without* intermediation by the control server 211. (emphasis added) As such, Dixon et al. in view of Lamarque III et al. cannot be said to teach or suggest the limitations found in Claim 1. Accordingly, withdrawal of the 35 U.S.C. § 103 Rejection as to Claims 1, 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, and 76 is respectfully requested.

Regarding Lamarque III et al. and its alleged combination with Dixon et al.:

Lamarque III et al. relates to the Internet telephony which is also referred to as "voce over IP" (VoIP). The system of Lamarque III et al. routes only voice messages, and is not suitable to request data (web-access) or to transmit data over the Internet. Accordingly, those of ordinary skill in the art would not utilize Lamarque III et al.'s teachings into Dixon et al. "to request data information through a network," contrary to the Examiner's allegation.

In addition, the alleged advantages of utilizing Lamarque III et al. would make sense only when it is compared with a conventional long distance call using a traditional telephone (voice) system (or PSTN 102 in FIG. 1 of Lamarque III et al.), not with a traditional data request/transmission system over the Internet (such as Dixon et al.'s). It should be noted that Lamarque III et al.'s idea (VoIP) is to utilize a conventional data request/transmission system over IP (such as that of Dixon et al.) to make telephone calls such that a long-distance voice call can be made in a similar manner as a data request/transmission using a local call (dial-up) to a nearby access point which is typically provided by an Internet Service Provider (ISP). That is, the user 124 (caller) can use a local Internet access point (gateway 128 or 114) (i.e., a local phone call) to reach a receiver in a distant area 140 (see FIG. 1 of Lamarque III et al.). On the other hand, in Dixon et al.'s system, access to a server or servers on a network such as a local network

(LAN), an intranet, or the Internet (World Wide Web) (see column 1, lines 15-20 thereof) does not use long distance carriers and thus does not incur any long-distance usage rates.

Accordingly, not only the Lamarque III et al.'s system would not be operable in Dixon et al.'s system, but also the alleged modification does not provide any advantages of bypassing long distance carriers and their permanent usage rates, failing to provide required motivation to combine.

Furthermore, even if Lamarque III et al.'s alleged teaching of the "call-in" user is allegedly combined with Dixon et al., the modified call-in user (replacing Dixon et al.'s client 101) would not place a call to Dixon et al.'s control server 111 because Dixon et al.'s control server 111, which is on the other side of the network 105, as is apparent from FIG. 1 of Dixon et al., cannot couple the alleged call to the alleged data communication network 105, as recited in Claim 1.

Consequently, (i) Dixon et al., whether considered alone or combined with the alleged teachings of Lamarque III et al., does not teach or suggest the claimed backup server as recited in Claim 1, (ii) the alleged combination is not obvious because the prior art fails to provide required motivation for combination, and (iii) even if Dixon et al. and Lamarque III et al. are allegedly combined, the modified system is inoperable, further rendering the alleged combination unobvious.

Accordingly, it is respectfully requested that the rejection of Claim 1 based on Dixon et al. and Lamarque III et al. be withdrawn.

Independent Claims 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, 76

Claims 9, 13, 17, 20, 30, 63, 66, 68, 69, 71, 74, and 76 recite, *inter alia*, substantially the same distinctive features as discussed above with respect to Claim 1. Accordingly, the discussions above are equally applicable to these claims and thus these claims are also patentable over Dixon et al. and Lamarque III et al. at least for the same reasons.

Additionally, the Applicant notes the Examiner's rejection of Claim 9 does not reflect the changes made to Claim 9 in the Response mailed September 6, 2007.

Dependent Claims 2-4, 10-12, 14-16, 18-19, 21-23, 25-26, 31, 52, 64-65, 67, 70, 72-73, 75, 77, 85, and 87-91

Claims 2-4 and 85 depend from Claim 1, Claims 10-12 and 87 depend from Claim 9, Claims 14-16 and 88 depend from Claim 13, Claims 18-19, 52 and 89 depend from Claim 17, Claims 21-23, 26 and 90 depend from Claim 20, Claims 31 and 91 depend from Claim 30, Claims 64-65 depend from Claim 63, Claim 67 depends from Claim 66, Claim 70 depends from Claim 69, Claims 72-73 depend from Claim 71, Claim 75 depends from Claim 74, and Claim 77 depends from Claim 76, and thus include the limitations of respective independent claims. The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable at least for the same reasons.

The Second 35 U.S.C. § 103 Rejection

Claims 24 and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Dixon et al. and Lamarque et al. as applied to claims 20-23 and 30-31 above, and further in

view of Cisco,[10] among which no claims are independent claims.[11] This rejection is respectfully traversed.

Claim 24

Claim 24 recites:

> A server backup system according to claim 20, wherein the server is a resource pool manager server (RPMS).

Claim 32

Claim 32 recites:

> A server backup system according to claim 30, wherein the first server is a resource pool manager server (RPMS) and the second server is a backup RPMS.

The Examiner states,

> ... Neither Dixon nor Lamarque discloses using a Resource Pool Manager Server. However, Cisco discloses a Resource Pool Manager Server (see page 1). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement a Resource Pool Manager Server in the computer system of Dixon to enhance the functionality of access servers because it would have provided Internet Service Providers and Telecommunications carriers with a robust solution for managing concurrent dial network services across single or multiple network access servers.[12]

The Applicants respectfully disagree. The arguments made above with respect to the 35 U.S.C. § 103 rejection of Claim 1 apply here as well. The 35 U.S.C. § 103 rejection of Claim 1 is unsupported by the cited art of record because Dixon et al. in view of Lamarque III et al. does not teach or suggest all claim limitations. Accordingly, the 35 U.S.C. § 103 rejection of dependent claims 24 and 32 based on Dixon et al. in view of Lamarque III et al. and further in view of Cisco

[10] "Network Wide Solution Manager Providers to Maximize Revenue from Dial VPN," Cisco Systems, April 5, 1999.
[11] Office Action at ¶ 4.
[12] Office Action, p. 11.

is also unsupported by the cited art of record. Thus, a *prima facie* case has not been established and the rejection must be withdrawn.

Claims 78-80, 81-82, and 83-84

As an initial matter, the Applicant notes Claims 78-80, 81-82, and 83-84 were previously rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Dixon et al. in view of Lamarque et al.[13] The Examiner's present rejection of Claims 78-80, 81-82, and 83-84 under 35 U.S.C. § 103 is the same as the Examiner's previous rejection of Claims 78-80, 81-82, and 83-84 under 35 U.S.C. § 103. In the Applicant's Response dated September 6, 2007, the Applicant presented several arguments traversing the rejection of Claims 78-80, 81-82, and 83-84 under 35 U.S.C. § 103. Specifically, the Applicant argued that the Examiner had not shown for each means-plus-function claim, that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function.[14] Considering that the Examiner has not provided any comments or rebuttal to Applicant's argument, but only restated prior rejections, it can be assumed that the Examiner agrees to the Applicant's arguments and that Claims 78-80, 81-82, and 83-84 are allowable.[15]

Again, Claims 78-80, 81-82, and 83-84 are means-plus-function claims. In support of the 35 U.S.C. § 103 rejection of Claims 22 and 24-35 based on Dixon et al. in view of Lamarque III et al., the Examiner refers to the rejection of method claim 65 and non-means-plus-function

[13] Final Office Action mailed June 6, 2007, at ¶ 3.
[14] Response dated September 6, 2007, at pp. 28-29.
[15] *In re Herrmann*, 261 F.2d 598 (CCPA 1958) (The court noted that since applicant's arguments were not questioned by the examiner, the court was constrained to accept the arguments at face value and thus held the claims to be allowable); *See In re Soni*, 54 F.3d 746 (Fed. Cir. 1995).

apparatus claims 1, 2, 9, and 17.[16] The Examiner is referred to the U.S. Patent and Trademark Office document entitled "Examination Guidelines For Claims Reciting A "Means or Step Plus Function" Limitation In Accordance With 35 U.S.C § 112, 6th Paragraph" ("Guidelines"), a copy of which is submitted herewith for the Examiner's convenience. The Guidelines state:

> ... Per our holding, the 'broadest reasonable interpretation' that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, *the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a Patentability determination* ...
> ... [The] examiner shall interpret a § 112, 6th paragraph "means or step plus function" limitation in a claim as limited to the corresponding structure, materials or acts described in the specification and equivalents thereof in acts accordance with the following guidelines.[17]

The Guidelines state further:

> ... if a prior art reference teaches identity of function to that specified in a claim, then under Donaldson an examiner carries the initial burden of proof for showing that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function.[18]

As Claims 78-80, 81-82, and 83-84 of the present application are means-plus-function claims and Claims 1, 2, 9, 17, and 65 of the instant application are non-means-plus-function claims, they cannot be said to be drawn to identical subject matter. Furthermore, the Examiner has not shown for each means-plus-function claim, that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function. Therefore, the Examiner has not established a *prima facie* case and the 35 U.S.C. § 103 rejection of Claims 78-80, 81-82, and 83-84 must be withdrawn.

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[16] Office Action at p. 10.
[17] "Examination Guidelines For Claims Reciting A "Means or Step Plus Function" Limitation In Accordance With 35 U.S.C § 112, 6th Paragraph," U.S. Patent and Trademark Office, http://www.uspto.gov/web/offices/pac/dapp/pdf/exmgu.pdf, p. 1. (emphasis added)

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

The Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,

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[18] Guidelines at p. 3. (emphasis in original)